

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2463 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MEHSANA NAGRIK SAHAKARI BANK LIMITED

Versus

NAVINCHANDRA P PATEL

Appearance:

MR TUSHAR MEHTA for Petitioner

MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/11/98

ORAL JUDGEMENT

This Special Civil Application has been filed by

The Mehsana Nagrik Sahakari Bank Limited challenging the order and judgement dated 24.1.1995 passed by the Industrial Court whereby the learned judge allowed the appeal of the respondent workman and granted backwages. The appeal filed by the bank challenging the order of reinstatement was rejected.

The say of the bank is that the respondent was appointed as apprentice on 11.6.1984 for a period of one year. He joined service as apprentice on 12.6.1984. On completion of apprenticeship by order dated 13.6.1985 his services were terminated. He raised a dispute by filing an application dated 17.6.1985 saying that his termination was illegal. Thereafter, he filed an application under Section 78 and 79 of the Bombay Industrial Relations Act before the Labour Court which was registered as an application No. 799 of 1985. The said application was rejected by order dated 4.7.1989. The respondent workman challenged the said order of the Labour Court before the Industrial Court, Ahmedabad, which was allowed and the matter was sent back to the Labour Court. The application filed by the workman was allowed by the order of the Labour Court dated 27.8.1993 and award was given to reinstate the respondent workman without backwages. The said order was challenged by the bank as well as the respondent workman. The appeal filed by the bank was rejected upholding the order of the Labour Court quashing the order of termination. The appeal filed by the workman was allowed and he was granted full backwages less the amount paid to him against the salary of Talati-cum-Mantri. It may be stated that after termination of the respondent workman on 13.6.1985 he was appointed as Talati-cum-Mantri by order dated 28.6.1985.

It is contended by Mr. Vakharia, learned counsel for Mr. Tushar Mehta, that the industrial court has committed an apparent error in considering the respondent as workman. It is submitted that the order of appointment clearly shows that he was appointed as apprentice. In view of this, his services have been rightly terminated after completion of one year. I am unable to agree with the submission of Mr. Vakharia. Both the courts below have examined this question at great length and there is a particular manner of appointing apprentice under the Apprenticeship Act, 1961. The respondent workman was never appointed as apprentice under the said Act. The finding of fact arrived at by both the courts below does not call for any interference by this court.

So far as the backwages are concerned, Mr. Joshi learned counsel for the respondent, frankly states that if the respondent is reinstated by the bank as clerk, he does not seriously insist on the backwages as he has been earning salary as Talati-cum-Mantri.

In view of the of the aforesaid, this Special

Civil Application is partly allowed to the extent that the respondent workman shall not be entitled to the backwages. So far as the order of reinstatement with continuity of service is concerned, the same is upheld. The salary of the respondent workman shall be fixed as if he has continued in service. Rule made absolute partly.

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